

## **REMARKS**

Applicants appreciate Examiner Baran's time and effort in the telephone interview discussing the present application. In accordance with the discussions in the telephonic interview, Applicants have amended claims 1, 18, and 20 to more clearly define the test signals as taught in the disclosure of the present application. Applicants have also provided new independent claim 21 which, based on the office action and telephone interview, Applicants believe equally distinguishes the cited prior art.

Applicants have reviewed the office action mailed 12/19/2002 and the references cited in the action. The Office Action cites U.S. Patent 6,363,421 to Barker et al (hereinafter "Barker") in its 102 rejection of Applicants' independent claims 1, 18, & 20. Applicants respectfully submit that the Barker reference addresses a method for remotely managing network elements while the present application addresses a method for testing and monitoring software applications. Barker collects information from the network elements using SNMP audits and polling and may in some embodiments use ICMP ping to monitor nodes. In these events, Barker is either not sending test signals at all (but is instead merely retrieving error messages generated by the network element) or is sending simple ping or existence requests and seeing if the element responds rather than using the element for its intended purpose.

By comparison, the present application is testing and monitoring software applications which have functional roles and responsibilities. The test signals are intended to engage the functions provided by the various applications to insure that not only are the applications existent, but that they are providing functional responses as designed (and in dependent claims monitoring the timing to the functional results). Specific examples of the various types of functional test signals are provided in the application, some of which are highlighted as follows.

In paragraph 40, the test signal may comprise registering to receive a message through a messaging service, or may comprise actually sending a message through a messaging service. In paragraph 41, the test signal may comprise registering an object with a naming service, or may comprise resolving an object with a naming service. In paragraph 42, the test signal may comprise subscribing to a publish/subscribe messaging service or may comprise publishing to a publish/subscribe messaging service. In paragraph 43, the test signal may comprise retrieving a web page from a web server or may comprise completing a secure authorization to access a web page from a web server. In paragraph 44, the test signal may comprise making and authorizing a security request for secure access to a web page through a security server or may comprise connecting to the security database of the security server to enable review or editing of the security database. In paragraph 47, the test signal may comprise initiating a transaction through an application server. In paragraph 48, the test signal may comprise retrieving information stored in a database through a database server. The focus of these examples is testing the functionality of the various applications for their intended purpose. To clarify that the sending of test signals to applications and receiving responsive results is intended to address any of the variety of functional tests described above, the independent claims have been amended to include the term “functional” to describe the test signals and “functionally” responsive to describe the results.

Applicants respectfully submit that the existence checking of network elements or collection of error messages from network elements performed by the Barker reference does not teach or suggest the functional testing of applications provided by the present application and its claims.

Additionally, while not necessary for allowability as it only relates to dependent claim 11, Applicants would also respectfully point out that U.S. Patent 6,144,727 to Mashinsky, does not teach tracking the time for functional responses to test signals to occur to evaluate load. Instead, Mashinsky appears to track time for actual bulk reservation requests only long enough to time them out if unfulfilled (Column 15, lines 20-27) and separately consider requesting additional call capacity when call volumes reach a threshold (not changing or reconfiguring capacity based on delay time for functions to occur and complete). Applicants suggest that these disclosures do not address the claim language provided by Applicants' claim 11.

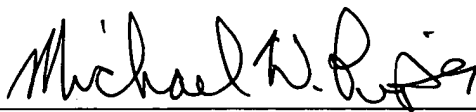
The Commissioner is hereby authorized to charge payment of any further fees associated with any of the foregoing papers submitted herewith, or to credit any overpayment thereof, to Deposit Account No. 50-1515, Conley Rose, P.C.

Applicants respectfully submit that the present application as amended is in condition for allowance. If the Examiner has any questions or comments or otherwise feels it would be helpful in expediting the application, he is encouraged to telephone the undersigned at (972) 731-2288.

Respectfully submitted,

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